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FIRST APPEAL NOS.
Gr.(1) 2091/93 TO 2101/93 & 2108/93, 2109/93
(2) 1981/93 TO 1990/93 & 1993/93 TO 2003/93
(3) 2037/93, 2038/93, 2040/93, 2041/93
(4) 1839/93 TO 1850/93
(5) 2064/93, 2065/93, 2071/93, 2072/93,2076/93 TO 2081/93
(6) 1854/93 TO 1860/93,
(7) 2003/93 TO 2018/93
(8) 2020/93 TO 2039/93,
(9) 2042/93 TO 2045/93, 2047/93, 2049/93, 2050/93
(10) 2054/93 TO 2059/93, 2061/93, 2062/93,
(11) 2066/93 TO 2070/93,
(12) 2073/93 TO 2075/93
(13) 2082/93 TO 2088/93, 2102/93, 2107/93
(14) 1002/94 TO 1014/94, 1016/94,
(15) 1026/94 TO 1036/94,
(16) 1426/94 TO 1445/94
(17) 5378/94 TO 5391/94,
(18) 3501/94 TO 3559/94

WITH CROSS OBJECTIONS.

Date of Decision : 16.3.1996

For Approval & Signature
THE HON'BLE MR. JUS...

AND
THE HON'BLE MR. JUSTICE A.R. DAVE

1. Whether reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other

order made thereunder ?

5. Whether it is to be circulated to the Civil Judge ?

F.A.Group Nos. 1 to 5 :
Mr. M.R.Anand, learned GP with Mr.L.R.Pujari, learned AGP for the Appellants.

Mr.A.J.Patel, learned Advocates for the claimants.

F.A. Grup Nos. 6 to 13 :
Mr. M.R. Anand, learned GP with Mr. L.R.Pujari, learned AGP for the Appellants.

Mr. Kalpesh Zaveri with Mr. Vipul Modi, learned Advocates for the Claimants.
F.A.Group Nos. 14 to 18 :

Mr. M.R. Anand, learned GP with Mr. A.J.Desai, learned AGP for the Appellants.

Mr. Kalpesh Zaveri with Mr. Vipul Modi, learned Advocates for the Claimants.

In above Group of Matter, Learned Advocate Shri J.M.Patel with learned Sr. Counsel Shri Harubhai Mehta, appeared on behalf of Acquiring Body.

CORAM : N.J.PANDYA & A. R. DAVE, JJ
16.3.1996

ORAL COMMON JUDGMENT : [Per : Pandya, J]

Mr. A.J.Patel, learned Advocate appearing for the orignal claimants has instructions to withdraw cross-objection. He has, therefore, made request to withdraw the same before effective hearing. The cross-objections are, therefore, allowed to be withdrawn without effective hearing. It stands disposed of accordingly.

Where the Acquiring Body is joined as party either as appellant or as respondent and that occassioned filing of separate appearance on their behalf. Where-ever the acquiring body was one of the appellant along with State, appearance was certainly there, for and on behalf of all those appellants and that is why in those matters where acquiring body was also one of

the appellants, appearance came to be that of Shri M.R. Anand, who happenes to be the Government Pleader.

Strictly speaking, therefore, where appearance was for both, namely the State and the Acquiring Body was by one and the same learned Advocate there could not have any difficulty in disposal. However, along with the matters that came to be disposed of included the lot where the acquiring body was arraigned on other side as one of the opponents and in those matters, though the appearance was filed by learned Advocate Shri J.M. Patel with learned Sr.Counsel Shri Harubhai Mehta who was to appear, their names were not shown and that is why they were not heard.

This was the reason why they filed Review Applications in those matters. The situation that emerges in the course of hearing of Review Application was that entire group of matters pertaining to Deesa Airfield acquisition were to be dealt with afresh in light of the material that was to be found on record of other group of matters including sale instances which were not there in the group of matters that was made the basis for arguing the matter on earlier occassion which resulted into said judgment dated 21.11.1995.

In other words, disposal of the matter in absence of the learned advocates appearing in some of the matters for respondent, had in fact resulted into not bringing to the notice of the Court the material which is on record. That is why the review came to be allowed and it was decided to hear the matter afresh.

On this occassion, it was, therefore, made sure that all the matters which are admitted and pending disposal, they are brought together and the concerned learned advocates appearing on behalf of the respective parties in all those matters are also properly informed and in their presence, the matters were heard and thereafter, this judgment is being delivered.

As a result of this attempt, what has happened is that for the original claimants, in one group learned Advocate Shri A..J. Patel is appearing whereas in another group, learned Advocate Shri K.S.Zaveri & Vipul Modi are appearing. The judgment is, therefore, delivered in those groups only. There might be stray matters left out, but they will be dealth with as and when they come up before the Court.

So far as these group of matters are concerned, for the appellant where there are two appellants, now position with regard to appearance is that for the State in some of the matters learned GP Shri M.R. Anand appears with learned AGP Shri L.R. Pujari whereas in remaining matters learned GP Shri M.R.Anand

appears with learned AGP Shri A.J.Desai appears and for the 2nd appellant i.e. Acquiring Body in such those matters, the learned Advocate Shri J.M.Patel with learned Sr.Advocate Shri Harubhai Mehta are appearing. Likewise, in the matters where there is only one appellant namely State, learned GP Shri M.R. Anand with learned AGP Shri A.J.Desai appears and in those matters, acquiring body i.e. Defence Estate Officer is joined as one of the respondent, learned Advocate Shri J.M. Patel with Sr. Advocate Shri Harubhai Mehta appears. For the original claimants, appearance has already been noted.

The learned Sr. Counsel Shri Harubhai Mehta took us through the judgment of the trial court and drew our attention to the fact that though the Land Acq. Officer Shri Mukesh Mehta has been examined at exh.85 and during his examination-in-chief in para-5, he has produced at exh.88 to 93 the sale instances which he had relied upon in giving his award, the tiral court not placing reliance thereon has created a situation as if the trial court had no alternative but to fall back upon the yield method.

In para-14 of his judgment, learned Judge has noted that said Shri Mehta, Land Acq. Officer exh.85, in no uncertain terms has stated that he has not gone by the yield method atall because according to Shri Mehta, quite often there weas scarcity like situation in Deesda taluka of Banaskantha District and, therefore, the Land Acq.Officer had relied on sale instances.

The learned Judge thereafter in para-15 refers to the prevailing practice of undervaluing property for saving stamp paper and as if he is taking judicial notice of this, he proceeded keeping in mind the fact that even while sale instances are produced, one has to make appropriate allowances to this factual position. However, keeping in mind the aforesaid prevailing practice which is brought to the notice of the trial court is one thing, but to raise it to the level of discarding it completely by the learned Judge is altogether a different thing. The learned Judge, by his judgment dated 1.5.1992 has done precisely this at the end of para-15 of his judgment given in one of the group matters tried before him namely Land Acq. Case No. 128/90 and other related matters. Reference to the judgment and record is drawn from that matter of the trial court. Whereafter, reference is made of other group matters, that will be specifically referred to in the course of this judgment by respective numbers.

For the aforesaid reasons, the learned Judge proceeded to staste in his judgment in para-16 that he will, therefore, be relying upon the deposition of Ishwarji Okhaji exh.35 who has deposed with regard to crop in connection with Land in question of above referred matters. These details are given in paras-16, 17, 18& 19 of the judgment. At the end of para-19, the learned

Judge comes to the conclusion that the claimants were taking three crops in a year. This is seriously disputed by the learned counsel appearing on behalf of the appellant or the appellants as the case may be.

In para-20 of the judgment, the learned Judsge refers to the situation of the land in relation to taluka head-quarter Deesa and then he refers to the testimony of witness C.G. Patel exh.75 in para-21. Shri C.G.Patel is examined by the claimants as an expert with regard to the land in question.

The learned Judge thereafter specifically expresses himself to the fact that in Land Ref. Cases, claimants have tendency to exaggerate their claims as to the crop and income derived therefrom and that is why in subsequent paras-23, 24, 25, 26 and 27 at different stages he reduced the amount and finally comes to the conclusion the per sq.mt. price of land at Rs. 1.25. Thereafter, in para-27, he comes to the conclusion that if sum of Rs. 10/ is invested on long term basis, the claimant will get annual income of Rs. 125/. He, therefore, holds that the claimants are entitled to Rs. 10/ per sq.mt. as compensation for the acquired land. Further he takes into account the possibility of exaggeration and reduces the said sum of Rs. 10/ by Rs. 1/ and finally awards Rs. 9.00 per sq.mt.

On behalf of the appellants, decision in the case of Dilawarsab Babusab & others v/s Land Acq. Officer, reported in AIR 1974 SC 2333 was cited and in para-9, the learned Judges of the Supreme Court have noted that undue reliance was placed by the Trial Court on the oral evidence led on behalf of the claimants appellants about the income from the land. In that case, there was no supporting documentary evidsence atall. Therefore, the learned Judges observed that the best evidsence would have been that of sale instances of similar lands at about the time of the notification under sec.4(1)

Similar question arose before the Supreme Court as to the method to be employed for working out market value of the land under acquisition in the case of Special Land Acq. Officer, Devangere v/s P. Veerabhandarappa etc. etc., reported in AIR 1984 SC 774. Paras-7 & 8 are material for our purpose. In no uncertain terms in para-7 it has been laid down that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under sec.4(1) of the Act and methods of valuation may be : (1) Opinion of experts; (2) The prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) A number of years' purchase of the actual or immediately prospective profits of the

lands acquired. After taking into conosideration these three methods, the learned Judges have further observed that normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if therer is evidence of comparable sales or other evidsence for computation of the market value. It has been further observed that it can be resorted to only when no other method is available.

After making the aforesaid submissions, it was further submitted that it is for the claimants who come before the Court by way of reference to establish their case for enhanced market value of the land and for this if any authority is needed, the one is to be found reported in 1994(2) SCC 595. So far as the principle of burden of proof is concerned, this authority is very clear and otherwise also, there cannot be any dispute in this regard. The burden is always on the claimants who assert higher value.

Incidentally, in that very decision in para-5, the aforesaid three methods are referred to and preference is shown in favour of the sale instances.

In this background, it was urged on behalf of the appellant or appellants as the case may be that when the said Land Acq. Officer Shri Mehta exh.85 has referred to the documents at exh.88 to 93, there they could have been the best evidence for arriving at the market value. Therefore, the original record was gone into. The deposition of Mr. Mehta recorded in the said Land Acq.Case No.128/90 reveals that what he had produced by way of exh. 88 to 93, are nothing else but the extracts of registered documents sent by the office of SubRegistrar to the revenue authorities for carrying out mutations in revenue records.

However, in another group of matters - Land Ref. Case No.319/89 and other matters wherein the claimants themselves have produced sale instances with list exh.9. The submission, therefore, was that when these sale instances are to be found on record in respect of land which can be very good evidence for the purpose of determining the price of the land under acquisition, in view of the aforesaid Supreme Court Judgment, the trial court ought not to have discarded the sale instances at least not for the reasons stated in the judgment.

The price range worked out from these documents if atall read in evidence was Rs. 3.30 per sq.mt. to 12.50 per sq.mt. The documents show that price is worked out for the unit of one sq.mt. at Rs. 12.50 and that it was very small piece of land admeasuring only about 4 gunthas while price worked out at the rate of Rs. 3.30 per sq.mt. referred to the land admeasuring

about 3 Acres. The reason for us to refer to this aspect is only that we have to bear in mind that if by way of sale instances brought before the Court with regard to sale comparatively small piece or parcel of land while applying that ratio to large area of the land under acquisition, one has tobe suitably reduce the rate and the reason is that essentially the acquisition was of the agricultural land as stated by the claimants cultivators and, therefore, though the price may be ultimately worked out per sq.mt., the sale instance being also for agricultural land, the fact that the Court is engaged in exercise of fixing the market value of the agricultural land, should not be lost sight of.

Technically speaking, these documents produced with list exh.9 were not taken on record and are not exhibited documents and, therefore, there would be objection to even read those documents in evidence. However, these being the documents produced from the claimants' side, they cannot get away from it and if atall to complete the formalities anything is required, it is simply this appellants who are opponents in the trial court may admit these documents and may accept that material to be used in evidence for all purposes. We are placing on record the fact that this technical objection was not raised on behalf of the claimants.

The net result, therefore, is that between the said range of Rs. 3.30 to Rs. 12.50 per sq.mt., there are now sale instances.

The lands are situated in Banaskantha District of the State of Gujarat, district head-quarter being Palanpur. In that district, by notification under sec.4 published on 5.4.1984, the lands were sought to be acquired for Sipu Irrigation Scheme. Irrigation Project was mooted across river Sipu of that district.

The matters were dealt with by this Court in the form of F.A. Nos. 995/93 to 1000/93 on 22.7.1994 by the then hon'ble Chief Justice Shri B.N.Kirpal sitting with hon'ble Mr. Justice R.K. Abichandani. A copy of that judgment is produced before us and it shows that for want of sale instances, yield method was employed by the trial court. The trial court there had fixed market price at Rs. 5.00 per sq.mt. in respect of agricultural land sought to be acquired as against the price offered by the Land Acq. Officer at Rs. 0.55 ps. per sq.mt. for non-irrigated land and Rs. 0.85 per sq.mt. for irrigated land.

Notification under sec. 4 of the Act in the present group of appeals has been published between 16.6.1986 to 10.11.1986 or there about. The said judgment of the first court in respect of Sipu Irrigation Project (hereinafter referred to as

the Sipu Judgment) would be clearly of help to us in deterining the market price. There yield shown and accepted by the court was that of three crops a year and in connection therewith, the price was fixed at Rs. 5/- per sq.mt. and was held to be conservative in the last para of the judgment. Likewise, there is indication that so far as the appellants are concerned i.e. State and in some cases other appellants they could not show informities in the judgment of the learned District Judge in that matters. Hence, while dismissing the appeals, the award of the learned District Judge was confirmed. As noted earlier, notification under sec.4 of the Act was of the year 1984 and to be exact, date is 5.4.1984. Almost two years have passed when notification came tobe issued under sec.4 of the Act in respect of present group of appeals. Even by applying what is by now accepted method of suitably increasing on years' purchase and to provide for falling value of the rupees and corresponding inflationary trend, there would be upward revision by about Rs. 1/= so far as the present group of appeals are concerned.

That apart, when aforesaid documents which are on record of Land Reference CaseNo.319/89 & group of matters and on the basis of said price range, if mean is struck, Rs. 7/ per sq.mt. in our opnion, would be the correct market value.

Learned District Jusge, in his reference, has not only committed error of ignoring the sale instances and inspite of presence on record, having been gone by yield method, has further erred to equate the irrigated lands with non-irrigated lands.

Irrigated land would mean that the actual land is situated in a given land or where there might be water sharing arrangement between the land-holders in and around area. The remaining lands where there is no such facility or amenity available, would be non-irrigated land. That distinction has tobe maintained, in our opinion, because on going through the record, one finds that essentially it is a single crop land. This, in fact, was the reason which prompted the Land Acq. Officer Mr. Mehta to adopt sale instance method which was available with him in the form of extract because he was having revenue record with him indicating that scarcity was quite common in the area if not prevailing althrough out and had he employed yield method, according to him, there would have been the negative result.

The emphasis on irrigation in such area, therefore, cannot be minimised. Obviously, single crop will be taken in monsoon and where irrigation facility in a given case is there, they might have ventured for 2nd crop provided rains are sufficient for the purpose. Only during very good monsoon season wells ofthe area will be properly recharged with subside water to be available for agricultural purpose for the 2nd crop. But for

that, well water will be utilised to tend the crop which might have been cultivated during monsoon season if it happens to be erractic or insufficient.

In our opinion, therefore, the price difference of Rs. 1/ per sq.mt. is required to be kept between the two i.e. Rs. 7/ per sq.mt. to be given for irrigated lands whereas Rs. 6/ per sq.mt. to be given for non-irrigated lands.

The peculiar thing has happened so far these group matters are concerned. There is a material on record particuarly by way of Civil Application Nos. 3447/93 to 3458/93 where learned Advocate Shri A.J. Patel appears for the original claimants. In these Civil Applications, it has been pointed out by way of affidavit of Deputy Collector, Rehabilitation that in respect of these acquisition proceedings, the Government has come out with Rehabilitation Project and inspite of that Rehabilitation Project being under contemplation, the actual possession is not handed over, which claim is nodoubt disputed by the other side.

This will have a direct bearing on the payment of interest on the price now determined. It is obvious that if actual physical possession is retained by the claimants, though on paper possession might have been taken over and further on paper even rehabilitation scheme might have been implemented in connection with a particular claimant, obviously, the physical verification on the spot will have to be carried out.

The rate of interest as fixed by the trial court is not disturbed atall. However, the beneficieries for the interest purpose will have to be actually identified and to be ascertained at the rate given by the trial court can be paid to a person who is really entitled to it.

For this purpose, the following directions are hereby issued :

(i) The Colloector of the District shall form a team under his direct supervision and control where he can take assistance of officers working under him up to the level of Deputy Collector and preferably that of Prant Officer of the Prant, if there be any and visit the place physically, ascertain the position during the entire period right from the date of publication of notification under sec.4 i.e. 4.8.1986 till today and for that purpose 7/12 extracts of the relevant years, the land assessment record which is referred to as Anawari statement and if scarcity during the relevant period is declared, payment of scarcity subsidy, if any made, also be taken into

consideration and likewise panchanamas that were drawn in respect of land under acquistion and which are brought on record in the aforesaid Civil Applications may also be taken into consideration. To facilitate the work of the learned Collector of the District, the State Authority or the Estate Officer, Deesa Airfield, are directed to supply the copies of panchanamas and produce the same before the Collector.

(ii) It is further directed that at the time when team is to visit the land in question, the visit shall be brought to the notice of the villagers and particularly claimants by notifying the Panchayat of that village and also pasting notice on Panchayat Office prominently. It is also left open to the claimants to inform the Collector that over and above said publication of notice, written notice may be given to one person designated by the claimants in respect of one village and notice so given to that person shall be considered to be sufficient notice to all the claimants of that village. This intimation should be given to the claimants within a one week of Collector of Banaskantha District, at Palanpur receiving copy of this order.

(iii) The aforesaid directions as to ascertainment of physical position should be carried out on or before 31st August 1996 and after that exercise is completed on the basis of the facts ascertained by the Collector, interest as awarded by the trial Court shall be paid to the person concerned.

(iv) The amount payable to the claimants on the aforesaid market value basis without the amount of interest, will be deposited within a period of 8 weeks from today. So far as the amount payable towards interest is concerned, it shall be deposited within 6 weeks from the date of ascertainment as per the directions given to the Collector of the District.

(v) So far as principal sum is concerned, those claimants who have actually and physically handed over the possession of the land and have not resumed the possession or in whose regard there is no dispute according to the record of the Collector, they may approach the learned Collector of the District with an application in that regard and after verifying the position from the record of the Collectorate as well as after consulting the Defence Estate Officer, Ahmedabnad, make an endorsement on the application on the basis of which the payment of principal sum shall be made to that claimant without waiting for said ascertainment exercise to be over.

(vi) Having come to know about rehabilitation scheme, we feel that its actual implementation would go long way, with a view to assuage the feeling of deprivement on the part of the claimants and, therefore, we express our strong feelings in favour of its earlier implementation and as far as possible it

should be seen by the concerned authorities that it is simultaneously carried out with the said exercise of ascertainment so that said rehabilitation scheme is also over by 31st August, 1996. Incidentally, it has been pointed out that in the said Civil Application, there is a record of scheme under rehabilitation having been operated in connection with the some of the claimants and scheme is also placed on the record of the Civil Application and accordingly, if rehabilitation scheme is operated in favour of some, remaining beneficieries be also extended the benefit of the same by the said period of 31.8.1996 and in case, there is any difficulty in connection with that, whose names appear in that list, they should also be simultaneously dealt with in the same manner as aforesaid so that the scheme with regasrd to those operates by that time.

Accordingly, all these appeals stand allowed partly with no order as to costs.

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Rawal*